

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 812 OF 2007

Vice Chairman of Area
Canteen, Mumbai Sub-Area,
Colaba, Mumbai.

.....Petitioner.

V/s

Their Workmen represented by
The General Labour Union
and anr.

.....Respondents.

Mr. M.M. Verma with Mr. Rajesh Gehani for the petitioner.

Mr. Sandeep Dadwal i/b Mr. Prakash Mahadik for Respondent No.1.

CORAM: V.M. KANADE, J.

DATE : 11th June, 2007

P.C.

1. Rule.

2. Rule is made Returnable forthwith with. Respondents waive service.

3. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the Respondents.

4. The grievance of the Petitioner is that the Central Government Industrial Tribunal does not have jurisdiction to decide the claims of the Respondents - employees in view of the judgment of the Apex Court in the case of Union of India Vs. M. Aslam and others reported in AIR 2001 SC 526. The Tribunal was pleased to pass Part-I Award and came to the conclusion that the Tribunal had jurisdiction to entertain the reference which was made by the Central Government. Thereafter, the Petitioner again filed a review application in the said reference and submitted that in view of the said judgment of the Supreme Court, the reference should be sent back to the Central Government since the Tribunal did not have jurisdiction to entertain the reference. The Presiding Officer, Industrial Court, however, rejected the said application and held that the Petitioner had not challenged the Part-I Award by filing Writ Petition in this Court and, therefore, it was not open for the Petitioner herein to file second application after Part-I Award was also declared by the Tribunal.

5. The learned Counsel appearing on behalf of the Petitioner submits that in the case of M. Aslam (supra), it has been categorically held by the Apex Court in respect of the Unit-Run Canteens that Unit-

Run Canteens are part of Canteen Stores Department in Defence Services and that the Central Administrative Tribunal has the jurisdiction to decide the claims filed by such employees. The learned Counsel submitted that the Part-I Award was passed though this judgment was, in fact, referred to by the Respondents herein and that the Tribunal has failed to take into consideration the ratio of this judgment. He, however, candidly admitted that in the Written Statement which was filed by the Petitioner herein it was averred that the Petitioner has no connection with the Government of India and is also not under the control and supervision of the Government of India and that the Petitioner being the separate entity should not be equated with the employees of the Central Government. He submitted that, however, in view of the judgment of the Supreme Court in the case of M.Asam (supra), irrespective of the averments made by the Petitioner in the Written Statement, the Tribunal was not competent to consider the claim or reference made by the Respondents.

6. The learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that when the Part-I Award was passed, the Judgment in the case of M. Aslam (supra) was not even referred to by the Petitioner herein. He submitted that, therefore, it was not open for

the Petitioner to now contend that the Tribunal did not have jurisdiction to entertain the reference.

7. I have perused the Part-I Award passed by the Tribunal as also the order passed on the application which has been taken out by the Petitioner herein. On the perusal of the Award, it can be seen that there is no discussion and no reference has been made to the judgment of the Supreme Court in the case of M. Aslam (supra). The Tribunal was under an obligation to consider the ratio of the judgment of the Supreme Court particularly when it deals specifically on this aspect regarding maintainability of dispute raised by the employees of the Unit run canteens. It is a well settled position in law that jurisdiction to decide a particular matter cannot be conferred on the authority even by the consent of parties. It is further well settled that question of inherent lack of jurisdiction can be raised at any stage. In my view, therefore, the Tribunal has clearly committed an error of law which is apparent on the face of record in not considering the ratio of the judgment of the Apex Court in the said M. Aslam's case (supra). The Supreme Court in the said judgment in para 3 has observed as under:-

“3.....

Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government Servants, when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr. Goswami, the learned senior counsel appearing for the Union of India strongly relied upon the judgment of this Court in *Union of India v. Chotelal* (1999) 1 SCC 554 : (1999 AIR SCW 29 : AIR 1999 SC 376 : 1999 Lab IC 428), wherein the question for consideration was whether Dhobis appointed to wash the clothes of cadets at NDA at Khadakwasla who are being paid from the regimental fund could be treated as holders of civil post within the Ministry of Defence. This Court answered in the negative because the regimental fund was held not to be a public fund as defined in paragraph 802 of Defence Services Regulation. Payment to such dhobis

out of the regimental fund and the character of that regimental fund was the determinative factor but in the case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit-Run Canteens then the employees who discharge the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the Defence Services have all pervasive control over the Unit-Run Canteens as well as the employees serving therein. Regular set of Rules have been framed determining the service conditions of the employees in Unit-Run Canteens. The funding of articles are provided by Canteen Stores Department which itself is a part of the Ministry of Defence. The report of a Committee of Subordinate Legislation went into detail the working conditions of the employees engaged in the Unit-Run Canteens and categorically came to the conclusion that these employees are recruited, controlled and supervised by

the Rules and Regulations made by the Defence Services although these have been given the name of Executive Instructions. The said Committee came to the conclusion that for all intent and purposes the employees in the Unit-Run Canteens are Government employees and should be treated as such. In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-Run Canteens must be held to be that of a Government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain the applications by such employees under the provisions of the Administrative Tribunals Act. Civil Appeal Nos. 1039-1040 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Branch in O.A. No.86 of 1995 accordingly stand dismissed.”

The judgment of the Supreme Court is binding on all Courts in view of the provisions of Article 141 of the Constitution of India. The ratio of the Judgment in the case of M. Aslam (supra) is squarely applicable to the facts of the present case. Thus, in view thereof, the Part-I Award as also the order passed on the subsequent application at

Exhibit-34 by the Presiding Officer dated 28/11/2006 are both quashed and set aside.

8. Since the reference is pending before the Tribunal since last more than six years, in the interest of justice, it would be appropriate if the Central Government Tribunal is directed to transfer the reference to the Central Administrative Tribunal. The Central Administrative Tribunal, on receipt of the reference shall decide the said reference on merits without raising the issue of limitation as expeditiously as possible and, in any case, within a period of one year. Rule is made absolute in the above terms. Under the circumstances, there shall be no order as to costs.

(V. M. KANADE, J.)